

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on	)	Rule and Regulation No. 170
its own motion, seeking to amend	)	
Title 291, Chapter 7, Transmission	)	
Lines Rules and Regulations, to	)	ORDER ISSUING FIRST SET OF
adopt rules regarding wires cross-	)	REVISED PROPOSED RULES AND
ing any railroad track at public	)	SCHEDULING HEARING
highway crossings in the State of	)	
Nebraska in accordance with <u>Neb.</u>	)	
<u>Rev. Stat.</u> §§ 75-702 to 75-724.	)	Entered: January 8, 2008
	)	

BY THE COMMISSION:

O P I N I O N     A N D     F I N D I N G S

On August 28, 2007, the Nebraska Public Service Commission (Commission), on its own motion, entered an order opening this docket and proposing rules to amend Title 291, Chapter 7, Transmission Lines Rules and Regulations. The proposed rules dealt with wires crossing railroad track at public highway crossings in the State of Nebraska in accordance with Neb. Rev. Stat. §§ 75-702 to 75-724.

Comments were filed on behalf of the following parties: AT&T Communications of the Midwest, Inc. and TCG Omaha, BNSF Railway Company, Cox Nebraska Telcom, LLC, The League of Nebraska Municipalities, LES, OPPD, NPPD, Loup Power District, Nebraska Telecommunications Association, Nebraska Rural Electric Association, Qwest, Union Pacific Railroad, Verizon Communications, Inc., and Wheat Belt PPD.

In response to the written comments filed concerning the proposed rules, the Commission has revised the initial set of rules. The first set of revised proposed rules are set forth in the attached Appendix incorporated herein by this reference.

Interested parties are invited to file comments on the first set of revised proposed rules on or before **5:00 p.m., February 20, 2008**. Parties filing comments should file one (1) original, eight (8) paper copies and one (1) electronic copy e-mailed to [deena.kumke@psc.ne.gov](mailto:deena.kumke@psc.ne.gov). The Commission will hold a hearing on the revised proposed rules set forth in the Appendix on **February 27, 2008, at 10:00 a.m.** in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the proposed rules in the above-captioned docket are revised as set forth in the Appendix.

IT IS FURTHER ORDERED that interested parties file comments on or before **5:00 p.m., February 20, 2008**. Commenting parties shall file one original (1), eight (8) paper copies and one (1) electronic copy e-mailed to [deena.kumke@psc.ne.gov](mailto:deena.kumke@psc.ne.gov).

IT IS FURTHER ORDERED THAT a hearing will be held in this matter on **February 27, 2008, at 10:00 a.m.** in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln.

MADE AND ENTERED at Lincoln, Nebraska, this 8th day of January, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

APPENDIX

Amendments to Nebraska Administrative Code, Title 291, Chapter 7,  
Transmission Lines Rules and Regulations

Insert the following new section:

003 TRANSMISSION LINES AND WIRES CROSSING RAILROAD TRACKS AT PUBLIC HIGHWAYS:

003.01 General: This section applies to all transmission lines and wires crossing railroad rights-of-way at public highways within the state. Nothing in this section shall be construed to reduce or negate the requirements and obligations pertaining to transmission lines subject to the provisions of Section 002.

003.02 Negotiation of Agreements; Failure to Reach Agreement; Hearing: Upon receiving a request to place any wire across any railroad track at a public highway, a railroad and the entity requesting crossing may negotiate and enter into a binding wire crossing agreement. If the railroad and crossing entity are unable to negotiate a binding wire crossing agreement within thirty (30) days from the receipt of the request for crossing, either party may petition the Commission, requesting a hearing on the disputed terms and conditions of the wire crossing agreement.

003.02A Duties of Parties Requesting Hearing: A party that files a petition for hearing under Section 003.02 shall include all relevant documentation concerning the unresolved issues and the position of the petitioning party with respect to those issues.

003.02B Notice: A party that submits a petition for hearing under Section 003.02 shall serve a copy of the petition and any other documentation on the other party or parties not later than the day on which the Commission receives the petition for hearing.

003.02C Opportunity to Respond: The non-petitioning party under Section 003.02 shall respond to the petition and provide any relevant documentation concerning the unresolved issues and the position of the non-petitioning party with respect to those issues within fifteen (15) days after service of the petition.

003.02D Action by the Commission:

003.02D1 The Commission shall limit its consideration of any wire crossing dispute to the issues set forth in the petition and in the response filed under Section 003.02C. The Commission may require the parties to provide such information as may be necessary for the Commission to reach a decision on the unresolved issues.

003.02D2 Upon petition for hearing by a party to the wire crossing dispute, the Commission shall set a hearing date not later than thirty (30) days from the date of the petition except for good cause shown. The Commission shall have thirty (30) days from the date of hearing to issue an order resolving each issue set forth in the petition and the response with written findings and opinions. In determining the terms and conditions, the Commission shall consider whether such terms and conditions are fair, just and reasonable and in the public interest.

003.03 Submission of Agreement to Commission: Upon issuance of an order by the Commission on the petition submitted pursuant to Section 003.02, the parties will have fifteen (15) days in which to file a conforming wire crossing agreement with the Commission. The Commission shall have fifteen (15) days from the date of filing the conforming agreement to approve or reject the agreement or the agreement will be deemed appropriate. The Commission may reject a wire crossing agreement if it finds that the wire crossing agreement does not conform to the order issued by the Commission.

003.04 Public Highway Defined: For purposes of this Section, public highway shall mean any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

003.05 Appeals: A party seeking to obtain reversal, modification, or vacation of an order entered by the Commission pursuant to this Section may appeal such order in accordance with the state's Administrative Procedure Act.